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C O N F I D E N T I A L LA PAZ 002824

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E.O. 12958: DECL: 10/18/2017

TAGS: [ECON](#) [PGOV](#) [PREL](#) [BL](#)

SUBJECT: CONSTITUENT ASSEMBLY SCENARIO I: DEAL AVERTS CRISIS

Classified By: EcoPol Chief Mike Hammer for reasons 1.4 (b) and (d).

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Summary
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¶1. (C) The Constituent Assembly is officially on recess until October 22 but risks total collapse if the government's Movement Toward Socialism (MAS) party and the opposition cannot reach agreement on key issues. This cable lays out the first of two most likely scenarios regarding the Constituent Assembly's future -- the possibility of a deal between the MAS and the opposition that averts a crisis. The second cable (septel) will present the Constituent Assembly failing scenario-- which most observers believe is more likely and will involve the MAS trying to push forward its "change" agenda through a new constitution quite possibly arrived at by extra-constitutional actions.

¶2. (C) Bolivian media and embassy contacts are describing a potential deal to salvage the Constituent Assembly, between the MAS and opposition, informally called "Constitution Lite." The agreement hinges on the MAS giving-in on departmental autonomy in exchange for the opposition yielding to re-election of the president. Many of the difficult details have yet to be hammered out; most would be left for congress to draft via laws. While some observers voice optimism, the reality is that an agreement will be difficult to reach as there are a number of complex and emotional issues. Furthermore, hard-liners from the MAS and/or the opposition will undoubtedly try to thwart it. Business interests (a base of support for the opposition) are said to favor the deal to ensure that the country does not slip into open conflict, a result harmful to their bottom line. President Evo Morales is believed to be eager to see a deal because it would guarantee that presidential re-election is enshrined in the new constitution.

¶3. (C) The "Constitution Lite" scenario is plausible because it follows the typical Bolivian model for reaching twelfth-hour political solutions right before the country

drops off into the abyss. It also postpones the hard decisions (the details) for a later day, another common attribute of Bolivian politics. Finally, the "Constitution Lite" gives politicians the ever popular "virtual victory," similar to last year's nationalization of the hydrocarbon's sector. Even if the negotiations fail, the MAS gains because it can argue it has made a good faith effort to negotiate with the opposition. If no/no agreement is reached, the MAS has already stated it will resort to "Plan B" (to be described in septel) -- which according to MAS Constituent Assembly member Raul Prada will be an effort to "gain approval of a new constitution through conflict." End Summary.

Autonomy for Re-Election Equals "Constitution Lite"

14. (C) There are several sets of negotiations occurring simultaneously during the Constituent Assembly's recess; the most visible headed by Vice President Alvaro Garcia Linera. According to PODEMOS alternate senator Rafael Loayza, he, Vice-Minister of Government Coordination Hector Arce (MAS) and Manuel Suarez (formerly advisor to ex-President Gonzalo Sanchez de Lozada) have been the prime actors in behind-the-scenes negotiations. Loayza argues he and his colleagues have crafted an arrangement that he calls "Constitution Lite." Under the deal the MAS would accept departmental autonomy, in exchange for the opposition accepting the MAS proposal to allow reelection of the president. This formula has long been rumored, but Loayza claims it is for real. According to Loayza the new constitution will be merely a guideline, leaving the current congress to hammer out the details via laws. (Note: Loayza has been a credible source of information in the past. End Note). Emboff spoke with MAS senator Luis Gerald Ortiz on October 17 and he, without prompting, mentioned the autonomy for re-election scenario.

15. (C) In a conversation with opposition (UN party) deputy Peter Maldonado on October 12, Maldonado mentioned that his party would never cede on presidential reelection. UN lead negotiator Samuel Doria Medina also recently told the British Ambassador that his party would not give in on re-election. Manuel Suarez separately told us that many in the opposition have grave concerns about granting Evo a chance at re-election but that others in Santa Cruz would be satisfied with a robust autonomy package. Suarez was not as optimistic as Loayza and thought that agreement was only possible if both sides realized that they stand to lose considerably more if chaos ensues -- "rational minds need to prevail for there to be a deal," he added.

16. (C) On October 17, Emboffs spoke with MAS deputy Oscar Chirinos Alancoa who represents approximately 300,000 people in El Alto. Chirinos started by emphasizing that El Alto voters are quite frustrated with the Constituent Assembly. Chirinos stated that in "his opinion" the Constituent Assembly would draw up a resolution to transfer to the congress the responsibility of completing the new constitution before the Constituent Assembly's mandate ends on December 14. The resolution may be a last ditch attempt by assembly delegates to produce something. In fact, Chirinos joked that if the delegates finish with nothing they will have to "move out of the country." When pressed, Chirinos mentioned that the resolution would contain a draft version of the constitution, but that it would be up to congress to work out the details. Alluding to the difficult task ahead for the congress, Chirinos emphasized that congress' mandate is not time-limited like the assembly, he then clarified that current congress' term lasts until 2011. Emboffs inquired if the draft would contain "autonomy in exchange for something else," but Chirinos refused to bite. He responded that those involved in negotiations do not make simple exchanges. (Comment: While Chirinos did not confirm the existence of "Constitution Lite," his scenario does include a critical component of the agreement, the transferring of the tough decisions of the new constitution

to the congress. End Comment).

The Basis for "Constitution Lite"

17. (C) Below is the basic outline of the agreement.

-- Re-Election of the President)-

According to Loayza the opposition and MAS are close to agreement on re-election, but for a total of two five-year terms. The issue of whether President Morales, current term will be counted) since it falls under the current constitution -- has not yet been decided. Should a presidential candidate not achieve an absolute majority (50 percent plus one) there will be a second round of voting. Whether the public will vote in the second round or whether congress will choose (as has happened in the past) has yet to be determined. Loayza believes that letting congress decide ensures that the President and congress are more likely to work together.

-- Departmental Autonomy)-

The MAS would agree to respect departmental autonomy, though details of the departmental governing structure have not been ironed out. According to Loayza, the departments will have some form of elected legislative body, a feature not in the current constitution

-- Indigenous Autonomy --

The opposition would yield on indigenous autonomy, but only at the municipal level. Indigenous municipal autonomy means that towns with a majority of one indigenous group could govern themselves by local customs/traditions. The opposition believes this will placate the MAS, base in the Andean highlands.

-- Congress)-

The MAS would abandon its quest to create a unicameral legislature, which would get rid of the senate. However, the MAS and opposition have agreed that all representatives will be elected directly, rather than the current practice of electing some deputies and all senators from party lists.

-- Communitarian Justice)-

Like with indigenous autonomy, the opposition would accept communitarian justice at the municipal level. Communitarian justice would be administered based on local customs and traditions. Sanctions could not be more extreme the traditional legal system, (i.e. no death penalty). This essentially would codify in the new constitution what already exists in the 1999 Criminal Penal Procedures code.

-- Sucre (Capital issue))-

Returning the legislative and executive branches to Sucre remains an open issue. Loayza argued that financial incentives for Sucre will break the impasse. He mentioned that Sucre might be offered additional revenue sharing from hydrocarbons taxes (IDH). Another possibility is monies for a new airport, which the Chuquisaca prefect has told us that he is keen to have.

-- Social Control)-

The MAS has apparently abandoned its proposal to create a fourth power in which social groups would "monitor and supervise" the other three traditional branches of government, at least at the national level. Apparently some version of this fourth power would exist at the municipal level.

Elections Still the Wildcard

18. (C) Emboff pressed on the issue of when new elections would be called under the new constitution. Loayza argued that the president and the congress would finish out their current mandates - remaining in office until 2011 -- while

hashing out the details of the "Constitution Lite" deal. Loayza explained there would be too much to work out for immediate elections to be called. He mentioned that National Election Court (CNE) would require significant amounts of time to re-jigger electoral districts given that congressional representatives under the new constitution would be directly elected. Furthermore, the election of departmental representatives and prefects could not be held until the current congress defined all the competencies of the newly autonomous departments. Loayza explained that both the MAS and the opposition will use this period to try to erode the other's support.

¶9. (C) Comment: While Loayza's argument are logical, President Morales has every incentive to push for elections the soonest possible. Morales is still quite popular yet realizes that his popularity could wane by 2011. Of course, the opposition would like to delay any election as much as possible believing that Evo will lose support as he fails to deliver on his many, many promises and as the economy sours. Most pundits agree that Evo is the odds on favorite to win re-election given that he enjoys 30-35 percent "hard" support, while no opposition candidate at the moment registers above 10 percent. Allowing for re-election would be a big gamble by the opposition but would provide short term stability. Many in the opposition also fear that Evo would not live up to commitments on autonomy and that the longer he remains president the more opportunity he will have to emulate Chavez. End Comment).

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Hard-liners Could Scuttle the Agreement
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¶10. (C) When pressed, Loayza conceded that hard-liners within the MAS and the opposition could derail the agreement. According to Loayza there is a split within his party PODEMOS between hard-liners who wish to see the Constituent Assembly fail, and moderates who wish to reach some form of negotiated constitution with the MAS. The hard-liners believe that the Constituent Assembly's failure will force the MAS to choose between respecting the current constitution, or taking more drastic extra-constitutional actions including the promotion of social conflict to pursue their political project. Hard-liners believe that the Morales will likely choose the latter leading to the party's undoing. The moderates agree that if the Constituent Assembly fails the MAS will resort to civil conflict. The "Constitution Lite" agreement prevents a bloody social conflict (i.e. violent unrest and even a possible civil war) which Loayza argues most people wish to avoid. Loayza noted that when he began his negotiations with the MAS, the hard-liners were all but calling him a traitor. However, now that he is having some success, some hard-liners are "moving toward his position."

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Hoping That Logic Prevails
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¶11. (C) Emboff reminded that Loayza that the agreement he is pursuing rests on the premise that the various political actors act rationally. Loayza argued that the agreement can obtain the necessary two-thirds majority in the Constituent Assembly which will give it legitimacy, thus marginalizing hard-liners from both sides. He noted that MAS hard-liners will come around because President Morales will support it (since his main objective is re-election), and that MAS politicians dutifully follow what the president orders.

¶12. (C) Loayza explained that business interests) the base of support for PODEMOS and other smaller opposition parties) will support the agreement to ensure stability over conflict. Loayza states that Branko Marinkovic, leader of the powerful opposition group the Santa Cruz civic committee, and Vice President Alvaro Garcia Linera met in late September and agreed on the basic concept of the "Constitution Lite." Marinkovic apparently told Loayza that

although he appears radical, he is in fact trying to hold back the more radical elements of the Santa Cruz opposition. Loayza argues businessmen, like Marinkovic and Samuel Doria Medina leader of the UN party, can live with the "Constitution Lite" if it prevents any major civil conflict which could disrupt their business.

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Comment: Prospects for the "Constitution Lite"
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¶13. (C) Determining the probability of success for "Constitution Lite" is difficult. More than likely only those individuals involved in the negotiations are aware of the back room deals being made. We can expect those outside of the negotiations, representatives from the MAS and opposition alike, will continue with their respective party's current platform until they are instructed to do otherwise. One of the supposed backroom negotiators, Manuel Suares recently told us prospects for an agreement remain and a deal can be struck only if the more moderate forces in both the government and opposition can carry the day. Suares truly hopes an agreement is reached because it represents the "only real prospect for averting a crisis and social unrest."

¶14. (C) The "Constitution Lite" scenario, however, is plausible because it follows the typical Bolivian model for reaching political solutions. First, it lets both the MAS and opposition pull back from the brink of conflict. Bolivian politicians have a history of negotiating last-minute deals to avoid major conflicts. Second, it postpones many of the hard decisions for a later day, another common attribute of Bolivian political deal-making. Finally, like the nationalization of hydrocarbons, the "Constitution Lite" is a virtual victory, but one that allows all the politicians involved including President Morales the ability to save face. With a deal, Evo can claim he delivered on his promise of a new constitution, meanwhile the opposition can argue that they have acted in good faith to listen to the "people's" demands. End Comment.

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